

**REMARKS**

The Final Office Action mailed February 26, 2007, has been received and reviewed.

Claims 1 through 19 and 21 through 41 are currently pending in the application. Claims 1 through 19 and 21 through 41 stand rejected. Applicants propose to cancel claim 22 and amend claims 1, 7-9, 12, 19, 23, 24, 29, 34, 36, and 40 herein. Applicants respectfully request reconsideration of the application with respect to the proposed amendments and analysis presented herein.

Claim 7 has been amended to correct an inaccuracy in the claim. Claims 8, 12, 23, 24, 34, and 40 have been amended to change a dependency, correct antecedent basis issues, or combinations thereof. All other claim amendments or cancellations are explained below.

**35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in view of U.S. Patent No. 7,007,062 to Serenyi et al.

Claims 1 through 19, 21 through 25, 29 through 31, and 36 through 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Serenyi et al. (U.S. Patent No. 7,007,062). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Regarding claim 1, in addressing Applicants analysis in the previous Amendment filed November 28, 2007, the Examiner stated that:

"In response to applicants argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "The network communication system does not require reliable network connection") are not recited in the rejected claim(s)."

As a result, Applicants propose to amend claim 1 to move the language related to not requiring a reliable networking connection from the preamble to a positively recited element of the claim. Support for this element may be found in the specification, among other places, at paragraph 0041, which states:

“Embodiments in accordance with the present invention do not require reliable networking connections to carry out network functions. An ODTP component is opportunistic, establishing network connections whenever possible and utilizing the connection for as long as the connection exists. When the connection is lost, the ODTP component waits for a re-connection or another connection to be established. If reconnected, the ODTP component will resume from the point that it left off with the last connection.”

In another area of the Examiner’s response to Applicants analysis in the previous amendment filed November 28, 2007, the Examiner stated that:

‘Applicant does not further define “dynamic connection” except stated that ‘creating a dynamic connection between the first and second communication nodes while in range.’ Therefore, the meaning of dynamic range has to be giving to the broadest interpretation, meanwhile, Serenyi indicates ‘transmitting data..’, the connection has to be established and the nodes has to be in range in order to establish connection, therefore, satisfied the limitation.”

As a result, Applicants propose to amend claim 1 to define further the dynamic connection and operations that are performed, or not performed, with respect to the dynamic connection. Specifically, Applicants propose to amend the element of employing an opportunistic data transfer to include the elements:

retaining for future communication, first data elements at the first communication node and second data elements at the second communication node when the dynamic connection is inactive;  
replicating the first data elements and the second data elements at each of the first and second communication nodes by propagating a redundant copy of the first data elements and the second data elements when the dynamic connection is active; and  
after the replicating, retaining the first data elements and the second data elements at each of the first and second communication nodes until a command is received to delete or modify the replicated data elements from the network.

Applicants believe that this amendment more fully defines the dynamic connection. Support for the element of “retaining for future communications . . .” may be found in the specification, among other places, at paragraph 0049, which states in part:

“At step 100, data not stored at a privileged communication node is transferred or replicated to the node by either an incremental or complete transfer and is stored locally at the node in step 102. The data transfer performed at step 100 includes providing a local copy at each of the communication nodes of the dynamic LAN of all delete commands initiated by the master archival system and carried by one or more of the communication nodes of the dynamic LAN. As long as privileged communication nodes are included in a dynamic LAN, steps 90-102 are executed to cause each of the privileged communication nodes of the LAN to store a local copy of all data available within the dynamic LAN.”

Support for the element of “after the replicating, retaining . . . until a command is received to delete or modify” may be found in the specification, among other places, at paragraph 0039, which states in part:

“data is only removed from the system when the master archival system receives and confirms that the data is secure at the master archival system and issues a delete command to remove all copies of the secure data from the dynamically mobile data communication system. Each communication node of the system deletes the secured data upon receipt of a delete command, which is distributed throughout the communication nodes of the system through the use of ODTP and was originated by the master system.”

With these amendments, the arguments presented in the previous amendment filed November 28, 2007, are even more applicable, and clearly indicate that there is no reasonable expectation of success to combine Serenyi with Kaye because Serenyi would not operate properly without a reliable network connection.

In addition, it appears to Applicants that neither Kaye nor Serenyi teach or suggest the claim elements of “retaining for future communication, first data elements at the first communication node and second data elements at the second communication node when the dynamic connection is inactive” and “after the replicating, retaining the first data elements and the second data elements at each of the first and second communication nodes until a command is received to delete or modify the replicated data elements from the network.” Furthermore, Applicants can find no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the Kaye reference or combine the Kaye and Serenyi reference teachings in the manner suggested by the Examiner to modify Kaye to perform opportunistic data transfers. Consequently, Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of claim 1 be withdrawn.

Regarding claims 2-18, these claims depend from now allowable amended claim 1. Therefore, at least by virtue of their dependency from an allowable claim, claims 2-18 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding claim 19, Applicants propose to amend claim 19 to include “wherein, when the dynamic connection is inactive, each of the two or more of the communication nodes retain data elements for future communication and, when the dynamic connection is active, the data elements at any of the two or more of the communication nodes are replicated across the dynamic connection to all of the two or more of the communication nodes.” While stated differently than in claim 1, this amendment includes the same general elements as added to claim 1. Specifically the elements of retaining data for future transfer when the dynamic connection is inactive and replicating data across the nodes when the dynamic connection is active.

As a result, for these elements, the analysis presented above with respect to claim 1 is equally applicable to claim 19. Consequently, Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of claim 19 be withdrawn.

Regarding claim 21, this claim depends from now allowable amended claim 19. Therefore, at least by virtue of its dependency from an allowable claim, claim 21 is allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of this claim be withdrawn.

Regarding claim 22, Applicants propose to cancel this claim because the subject matter therein has been incorporated into amended claim 19.

Regarding claims 23-25, these claims depend from now allowable amended claim 19. Therefore, at least by virtue of their dependency from an allowable claim, claims 23-25 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding claim 29, Applicants propose to make minor changes to this claim to correct

antecedent basis and further define “creating a dynamic network between the first and second communication nodes when they are in the communication range.” In rejecting this claim the Examiner states that the element of “if the first and second communication nodes are not determined to be privileged for ~~data exchange~~ the data replication, disconnecting the dynamic network,” is taught by Kaye at Column 6, line 65 to Column 7, line 10. Applicants respectfully disagree. This passage in Kaye discusses a subscriber leaving a group and a resultant modification to the group coverage tree. However, the passage does not explicitly address disconnecting the network as the Examiner suggests. It appears to Applicants that the Examiner may be assuming that leaving a group is the same as moving out of communication range. This assumption is not necessarily true. Kaye defines groups based on function of the subscribers, not their presence in communication range. This interpretation of group is apparent from Kaye stating that:

“The described registration procedure can be adapted to group membership and coverage and has particular application to public safety users in which groups may be formed dynamically and subscribers may be the members of more than one group. For example a fire tender which is a member of a fire service group may form a temporary group with say an ambulance and a police patrol vehicle to deal with a particular emergency incident.”

Thus, it appears to Applicants that in Kaye, subscribers may join or leave groups independent of whether they leave communication range.

Furthermore, even if the Examiner’s assumption is true, the element in question in claim 29 does not recite leaving the coverage area. Rather, the element recites disconnecting the dynamic network if the first and second communication nodes are not privileged for data replication. This element does not recite anything about disconnecting the dynamic network as a result of communication range issues. Applicants can not find the element of disconnection in the event of lack of data replication privileges in either the Kaye reference or the Serenyi reference. Therefore, the prior art references (or references when combined) do not teach or suggest all the claim limitations as required for a 35 U.S.C. § 103(a) obviousness rejection. As a result, Applicants respectfully request that the rejection of claim 29 be withdrawn.

Regarding claims 30 and 31, these claims depend from now allowable amended claim 29. Therefore, at least by virtue of their dependency from an allowable claim, claims 30 and 31 are

allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding claim 36, this claim includes substantially the same subject matter of claim 29. Therefore, the analysis presented above with respect to claim 29 is equally applicable to claim 36. Consequently, Applicants respectfully request that the rejection of claim 29 be withdrawn.

Regarding claims 37 and 38, these claims depend from now allowable amended claim 36. Therefore, at least by virtue of their dependency from an allowable claim, claims 37 and 38 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in view of U.S. Patent No. 7,007,062 to Serenyi et al. and further in view of U.S. Patent No. 6,141,686 to Jackowski et al.

Claims 26 through 28, 32 through 35, and 39 through 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Serenyi et al. (U.S. Patent No. 7,007,062) and further in view of Jackowski et al. (U.S. Patent No. 6,141,686). Applicants respectfully traverse this rejection, as hereinafter set forth.

Regarding claims 26-28, these claims depend from now allowable amended claim 19. Therefore, at least by virtue of their dependency from an allowable claim, claims 26-28 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding claims 32-35, these claims depend from now allowable amended claim 29. Therefore, at least by virtue of their dependency from an allowable claim, claims 32-35 are allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

Regarding claims 39-41, these claims depend from now allowable amended claim 36. Therefore, at least by virtue of their dependency from an allowable claim, claims 39-41 are

allowable and Applicants respectfully request that the 35 U.S.C. § 103(a) obviousness rejection of these claims be withdrawn.

**ENTRY OF AMENDMENTS**

The proposed amendments to claims 1, 7-9, 12, 19, 23, 24, 29, 34, 36, and 40, and cancellation of claim 22 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, Applicants believe the amendments do not raise new issues or require a further search. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

**CONCLUSION**

Claims 1-19, 21, and 23-41 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

/Eric M. Barzee/

Eric M. Barzee  
Registration No. 45,911  
Attorney for Applicants  
P.O. Box 1625  
Idaho Falls, ID 83415-3899  
Phone: (208) 526-9140  
Fax: (208) 526-8339

Date: 16 April 2007